Filed 1/17/19 In re S.A. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re S.A., et al., Persons Coming Under the Juvenile Court Law.	B287408 (Los Angeles County Super. Ct. No. DK24062 A & B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. PAUL A., Defendant and Appellant.	

APPEAL from jurisdictional findings and dispositional orders of the Superior Court of Los Angeles County, Julie F. Blackshaw, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Shante Sylvester, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Paul A. (father) appeals from the juvenile court's jurisdictional findings and dispositional orders, contending there was insufficient evidence to support a finding that he posed a substantial risk of serious physical harm to his children because of a mental condition, or that he had neglected the children by leaving them with their paternal grandparents without a plan for their support. Father also asserts the juvenile court improperly removed the children from his custody pursuant to Welfare and Institutions Code section 361, subdivision (c),[1] as the children were not residing with him at the time of the order, and the juvenile court failed to make required findings pursuant to section 361.2. Finally, father contends the juvenile court abused its discretion by requiring him to participate in a drug and alcohol treatment program. We affirm.

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[1] Further statutory references are to the Welfare and Institutions Code.

II. BACKGROUND

A. *Initial Department Referral*

On May 11, 2017, the Los Angeles County Department of Children and Family Services (the Department) received a referral of general neglect as to S.A. (13-year old girl), E.A. (11-year old girl), and their half-sibling G.N., by the children's mother and G.N.'s biological father, S.N.[2]

In a July 26, 2017, detention report, the Department reported the following facts: Mother told the social worker that S.A. and E.A. had lived with paternal grandparents in Fresno during the prior year, but had returned to Los Angeles in April 2017. Father was the biological father of S.A. and E.A., but the family had no contact with him and mother did not know his whereabouts.

S.A. told the social worker that she had no contact with father and E.A. stated that she had not seen father for over a year but spoke to him when he called on the phone.

On June 14, 2017, father called the social worker and left his telephone number in a voicemail message. When the social worker returned the call, no one answered. On June 30, 2017, the social worker spoke with father, who stated the following: he had been attempting to contact someone regarding his children. He and mother were originally from the Bay Area and had been married, but subsequently divorced. Mother had previously left the children with father and moved to Los Angeles. Later, mother obtained a restraining order against father in Los Angeles, returned to the Bay Area, and took the children away.

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[2] G.N. and S.N. are not parties to this appeal.

Mother obtained full custody of the children at a hearing when father failed to appear after being arrested. Mother did not allow him to see or speak to his children. Father was currently employed and intended to move to Los Angeles in the next three weeks to obtain custody of his children.

The social worker later confirmed with the probate and family law court that there was no custody order regarding S.A. and E.A. A restraining order against father had been filed, but was dismissed on March 11, 2009, for lack of prosecution.

The social worker contacted the paternal grandparents, who stated that S.A. and E.A. had lived with them in Fresno from November 2016 to April 2017, while mother was enrolled in an inpatient drug treatment program. According to the grandparents, father drank alcohol in the past, but now had a stable job and was doing well.

On July 14, 2017, the juvenile court ordered the children removed from mother and S.N.'s custody.

B. *Section 300 Petition and Detention Hearing*

On July 26, 2017, the Department filed a section 300 petition, which made numerous allegations regarding mother, but asserted no allegations regarding father.

At the detention hearing that same day, the juvenile court found father to be the presumed father of S.A. and E.A. Father told the juvenile court that he intended to move into a home purchased by paternal great aunt. Therefore, the children would live with paternal grandparents for just a couple of days. The juvenile court ordered father not to change his or the children's residence without notifying the social worker. The court also

advised father that he could not take the children out of California without informing the social worker.

C. *First Amended Section 300 Petition and Jurisdiction/Disposition Report*

On August 30, 2017, the Department filed a first amended section 300 petition, alleging two counts pursuant to section 300, subdivision (b)(1) as to father. The Department alleged in count b-7[3] that father had a long-standing history of substance abuse and frequently used illicit drugs, including alcohol, marijuana, and methamphetamine. The Department also alleged in count b-8 that father had a history of mental and emotional problems, including suicidal ideation and involuntary psychiatric hospitalization.

The Department submitted a jurisdiction and disposition report that stated the following: On August 11, 2017, a dependency investigator drove to the Bay Area and met with father at a restaurant in Oakley, California. The investigator initially agreed to meet with father at his last known address, but father requested a change of location 15 to 20 minutes prior to the scheduled meeting. Father told the investigator he was temporarily residing with "old" people while his escrow closed in Clovis, California. Father did not have plans for his children to visit him at his current address.

According to father, when he and mother were young, they used marijuana, methamphetamine, and alcohol, but stopped

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[3] The count was initially designated as count b-6, but later renumbered as count b-7. Similarly, the next count was initially designated as count b-7, but later renumbered as count b-8.

when the children were born. Father denied currently using drugs and was willing to undergo drug testing. Father had been sober for a year and a half and had attended a rehabilitation program in Santa Monica six years ago.

Regarding his mental health, father told the investigator that he once "told the hospital that [he] wanted to kill himself, only to get a place to stay." He also explained that he was hospitalized three to four years prior to the interview. Father stated, "They didn't diagnose [me] or give me [a] prescription." While incarcerated in federal prison, however, father was diagnosed with attention deficit hyperactivity disorder and was prescribed Adderall. Father was not taking any medication at the time of his interview with the investigator and had stopped following up with a physician for his medication regimen. Father assured the investigator that he would see a psychiatrist within 24 hours to rule out current mental health issues.

On August 22, 2017, the investigator attempted to confirm that father had seen a psychiatrist by leaving him a voicemail message and sending him an email. But as of August 29, 2017, father had not responded.

A social worker interviewed paternal grandfather on August 10, 2017.[4] Paternal grandfather stated that father had not previously been in regular contact with the children because father did not know how to reach them. Although father visited the children as much possible, he was sometimes incarcerated or in a rehabilitation program. When the children previously resided with paternal grandparents, they "were in counseling," and paternal grandfather believed the children would benefit

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[4] From context, it appears the interview occurred in Clovis, California.

from further counseling. Father's plan was to move "here" with the children and to obtain a job. Paternal grandfather added, "We've been gamed so many times. If he does what he says he is gonna do, the kids should be ok."

On August 21, 2017, paternal grandmother called the investigator and reported that to the best of her knowledge, father did not have mental health issues.

D. *Section 385 Petition*

On September 18, 2017, the Department filed a section 385[5] petition requesting that the juvenile court detain S.A. and E.A. from father. The petition recounted the following facts in support of its request: On August 8, 2017, father informed the Department he intended to relocate from the Bay Area to Clovis, California, to rent a home from his aunt. The social worker could not reach father at the phone number he had provided. On August 29, 2017, the social worker telephoned paternal grandfather in order to obtain a current telephone number for father. Father was with paternal grandfather during the telephone call, and apologized to the social worker for not updating his contact number. Father informed the social worker that he was in Fresno and would be moving into his new home with the children by the end of the weekend.

On September 5, 2017, paternal grandfather contacted the social worker to report that father's planned housing had fallen through. Father no longer planned to live in a home near

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[5] Section 385 provides for the modification or change of any juvenile court order made in the case of a person subject to its jurisdiction.

paternal grandparents. Instead, father intended to return to the Bay Area with the children. Father had not advised the social worker of this plan, and when she called father, no one answered the phone and she was unable to leave a voicemail message.

On September 6, 2017, paternal grandfather reported being "fed up" with father's behavior. Paternal grandparents felt "underappreciated and unsupported." Paternal grandfather did not believe that father was using drugs, but thought that father had not resolved the issues that previously caused him to use drugs. Father had only visited the children once during the time that they had resided with paternal grandparents. During that visit, father took $40 and discount cards from S.A., who had raised the money for a fundraiser and planned to raise more money by selling the discount cards. Paternal grandfather asked father to return the money and the cards but was not confident that father would do so. G.N.'s father, S.N., reported that in the past seven years, father had visited the children only five times and given S.A. $65 once.

Paternal grandfather stated that he and paternal grandmother were tired of receiving angry emails and "nasty" messages from father and had considered obtaining a restraining order against him. Paternal grandparents had medical appointments on September 14 and September 15 in Los Angeles, and needed someone to care for the children while they were away. They considered leaving the children with the child protective services agency in Fresno. Paternal grandfather asked the social worker to confirm with father that he would pick up the children for court.

On September 6, 2017, father telephoned the social worker and advised that he no longer intended to move into his aunt's

home because she suspected he was on drugs. Father denied any drug use and expressed his willingness to take weekly drug tests.[6] In an apparent response to the social worker's inquiry whether he would take the children to court, father stated that paternal grandparents were responsible for transporting the children to the juvenile court for a scheduled hearing on September 18, 2017. Father also stated he intended to live with his girlfriend and her mother in the Bay Area, but he did not know the address.

On September 7, 2017, the social worker attempted to call father but his telephone was disconnected. On September 8, 2017, the social worker called paternal grandfather, who reported that he had argued with father while trying to help him create a budget. Father "stormed off and left." Paternal grandfather had "no idea" what father's plans were regarding the children. The social worker telephoned father but the phone was not accepting calls.

On September 11, 2017, a service provider from the Department of Mental Health (DMH) contacted the social worker and reported that father had not enrolled the children in counseling or obtained Medi-Cal for them. The DMH service provider had concerns that father would move the children without a plan to meet their educational or mental health needs.

On Monday, September 11, 2017, paternal grandfather informed the social worker that he had received a text from father, stating that father would be arriving the following evening to pick up the children and take them to the Bay Area.

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[6] The Department, however, was unable to verify his sobriety with random drug tests because father resided outside Los Angeles County.

Father did not provide an address for where he would be staying. Paternal grandparents were willing to continue providing care for the children if they were given caregiver rights and financial support.

On September 12, 2017, the social worker instructed paternal grandfather not to allow father to take the children because father had not provided a valid address to the Department.

On September 18, 2017, paternal grandparents requested the issuance of a restraining order against father. The request included S.A. and E.A. as persons to be protected from father. Paternal grandparents alleged that father sent "hateful" texts at all hours of the night, threatened to make the grandparents' lives miserable, and threatened to take the children from their home. Father's behavior caused paternal grandmother to fear for her safety.

In its petition, the Department requested that the juvenile court find by clear and convincing evidence that the children should remain removed from the physical custody of the parents. The petition cited section 361, subdivision (d), but did not refer to section 361.2.

E. *Section 385 Hearing*

On September 18, 2017, the court conducted a hearing pursuant to section 385. In support of his request that the children be released to his care, father testified at the hearing, during which the following exchange occurred:

"THE COURT: I don't know what document you have there, but certainly your testimony should not be — you should

not be reviewing or reading documents while you are testifying. If there is something —

"THE FATHER: These are my personal notes that I need to remember things.

"THE COURT: All right. If you need to look at your notes, please say so, and then I can let you refresh your recollection by reviewing your notes, but then you'll have to —

"THE FATHER: That's okay. I have them memorized. There you go.

"THE COURT: Don't interrupt.

"THE FATHER: I'm just letting you know.

"THE COURT: You just interrupted.

"THE FATHER: Good. By the way, I was going to say my children -- they are property. I want my children. No, I want my children. They are property. Give me my children.

"THE COURT: [Father], are we going to do a regular —

"THE FATHER: I —

"THE COURT: I am going to leave.

"THE FATHER: It's my property. I want my property. You're leaving because of the fact you know I'm right."

Following this exchange, the judge left the bench until father was removed from the courtroom. In father's absence, his counsel requested the children be released to father's care. Counsel for the children requested detention from father and placement with paternal grandparents. The Department's counsel offered into evidence a letter from father entitled "I Require Restoration of My Property." The juvenile court admitted the letter without objection. The letter stated the following: Father "never gave no entity the right to administer [his] said property," "[S.A. and E.A.] [are] [his] property," "[n]o

man or woman is going to come into court [and] say that [his] claim is false or untrue," father "want[s] [his] property back," "[s]aid property is to be totally under [his] control immediately," and "[i]f said property [S.A. and E.A.] are not returned to [their] exclusive source of said origin[,] [he] will charge holder of said property $10,000 ten thousand dollars for every day past 21 [calendar] days."

At the conclusion of the section 385 hearing, the juvenile court ordered the children detained from father and placed in the care of paternal grandparents.

F. *Second Amended Petition*

On September 19, 2017, the Department filed a second amended petition with additional allegations against father pursuant to section 300, subdivisions (b)(1) and (g). The amended petition included count b-9, which alleged that father: left the children with the paternal grandparents without making a plan for their ongoing care and supervision; failed to provide the children with food, clothing, shelter, and medical treatment; and had a transient life. The Department also alleged that father's failure to provide for the children endangered the children's physical and emotional health, safety, and well-being, and placed the children at risk of physical and emotional harm and damage.

G. *Jurisdiction and Disposition Hearing*

On September 25, 2017, the juvenile court conducted a jurisdiction and disposition hearing on the first and second

amended petitions. Mother and S.N. pleaded no contest to all of the allegations against them.

As to father, the juvenile court sustained count b-8, which alleged that father had a history of mental and emotional problems, and count b-9, which alleged, among other things, that father had left the children with paternal grandparents without making a plan for their ongoing care and supervision. The juvenile court dismissed the other allegations, including the substance abuse allegation, stating, "There is no question that father has an extensive history of substance abuse, but I do not have clear evidence of current use and current risk to the children."

Regarding disposition, father requested the children be returned to his care and indicated he had obtained stable housing in Salem, Oregon. Father provided the Oregon address to the court on a notification of mailing address form, filed September 18, 2017. Father also requested that he not be ordered to complete a full substance abuse program, but instead be required to undergo random drug testing. The juvenile court ordered the children "remove[d] from all of the parents" and suitably placed pursuant to "disposition order 415."[7] The juvenile court ordered reunification services for mother and father.

On September 26, 2017, the juvenile court served notice of entry of the minute order, which included additional findings. Specifically, the minute order included a statement that the court was removing the children from the parents, pursuant to section 361.2. The minute order additionally stated that the

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[7] Judicial Council Form JV-415 may be used by courts for "Findings and Orders after Dispositional Hearing." The record does not include a Form JV-415.

juvenile court found "by clear and convincing evidence . . . [¶] [that] it would be detrimental to the safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child to be returned to or placed in the home or the care, custody, and control of that or those parent(s)/legal guardian(s)."

III. DISCUSSION

A. *Jurisdictional Findings Were Supported by Substantial Evidence*

Father contends that there was insufficient evidence to support the juvenile court's exercise of jurisdiction over the children pursuant to section 300, subdivision (b)(1). "'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.'" (*In re I.J.* (2013) 56 Cal.4th 766, 773.) In reviewing the jurisdictional findings for substantial evidence, "[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) We focus our discussion here on count b-9.

Substantial evidence supports a finding that the children were at substantial risk of serious harm due to father's neglect.

Among other neglectful acts, father left the children with paternal grandparents without making a plan for their ongoing care and supervision. In addition, although father initially told the juvenile court that the children would remain with paternal grandparents for just a few days, father left the children with them from approximately July 26, 2017, until at least September 11, 2017. During that period, father visited the children only once. Moreover, he did not provide financial support for them and instead took $40 from S.A. His behavior caused paternal grandparents to consider leaving the children with child protective services in Fresno.

Father also failed to plan for the children's mental and physical care. By September 8, 2017, paternal grandfather still had "no idea" of father's plan for his children. A service provider from the DMH had contacted the social worker, concerned that father had not enrolled the children in counseling or obtained Medi-Cal insurance for them.

Moreover, father had unstable housing and no concrete plan to obtain stable housing. He did not maintain a reliable telephone number and regularly failed to return phone calls. And contrary to the court's order, he did not advise the Department that he intended to move the children to Oregon. Such conduct supported a reasonable inference that father would be unable to provide his children with stable housing and would prevent the Department from protecting them.

Finally, father had a history of neglecting his children. S.N. reported that in the past seven years, father had visited the children only five times, and had given S.A. $65 once. "The court may consider past events in deciding whether a child currently needs the court's protection." (*In re Kadence P.* (2015)

241 Cal.App.4th 1376, 1383.) We conclude the juvenile court's jurisdictional finding as to count b-9 is supported by substantial evidence. In light of our conclusion, we need not address the parties' arguments as to count b-8, which alleged that father had a history of mental and emotional problems. (*In re I.J., supra*, 56 Cal.4th at p. 773.)

B. *Any Error in the Court's Removal Order was Harmless*

Father next argues that the juvenile court failed to make a finding that placing the children in his custody would be detrimental to their safety, protection, or physical or emotional well-being, as required by section 361.2. According to father, the juvenile court instead incorrectly applied section 361, subdivision (c). The Department concedes that if the juvenile court applied section 361, subdivision (c), it did so in error, but maintains that we should infer the juvenile court applied section 361.2. The Department cites in support the minute order, which correctly references section 361.2.[8]

We agree with the parties that, by its express terms, section 361, subdivision (c), does not apply to the removal of minors from parents with whom they do not reside. (*In re Abram L., supra*, 219 Cal.App.4th at p. 460.) Rather, the statute governing father's request that the children be placed in his custody is section 361.2, which provides that: "When a court

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[8] The Department further argues that father, by failing to raise these issues in the juvenile court, forfeited his arguments on appeal. We decline to find such forfeiture here. (*In re Abram L.* (2013) 219 Cal.App.4th 452, 462; accord, *In re Jonathan P.* (2014) 226 Cal.App.4th 1240, 1252.)

orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (*In re Abram L., supra,* 219 Cal.App.4th at pp. 460-461.)

We decline the Department's invitation to infer that the juvenile court applied section 361.2. Although the minute order correctly cites to this section, the juvenile court ordered that the children be "removed" from "all the parents," suggesting the juvenile court was referring to section 361, which addresses removal of minors. Moreover, the Department's September 19, 2017, petition cited to section 361, subdivision (d), but did not cite to section 361.2.

Even assuming, however, that the juvenile court erred, we will not reverse unless father demonstrates a reasonable probability that he would have achieved a more favorable result absent the error. (*In re Abram L., supra*, 219 Cal.App.4th at p. 463; accord, *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 303.) Father has not met this burden.

The juvenile court ordered the children "suitably place[d]" by the Department, and not with any of the parents, demonstrating that it did not intend for father to have custody after the children were removed from mother. Further, the juvenile court found, supported by substantial evidence, that father had neglected the children by leaving them with paternal

grandparents without making a plan for their care and supervision. "If a noncustodial parent is in some way responsible for the events or conditions that currently bring the child within section 300—in other words, if the parent is an 'offending' parent—those facts may constitute clear evidence of detriment under section 361.2, subdivision (a)." (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1505.) Even if the juvenile court had applied section 361.2, it is not reasonably probable that it would have placed the children with father. Thus, any error in the juvenile court's failure to apply or comply with section 361.2 was harmless. (*In re D'Anthony D., supra*, 230 Cal.App.4th at p. 303 [failure to make findings under section 361.2 subject to harmless error review]; *In re Abram L., supra*, 219 Cal.App.4th at p. 463.)

C. *Juvenile Court Did Not Abuse Its Discretion by Ordering Father to Participate in Drug and Alcohol Program*

Finally, father contends the juvenile court abused its discretion by ordering him to participate in a full drug and alcohol rehabilitation program with aftercare, and weekly drug and alcohol tests, even though it found insufficient evidence to support the allegation related to father's alleged substance abuse. We disagree.

"At disposition, the juvenile court is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the children. [Citation.] Instead, the court may consider the evidence as a whole." (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311; accord, *In re D.L.* (2018) 22 Cal.App.5th 1142, 1148.) Moreover, once a child is found to be a dependent under section 300, "the court

may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court." (§ 362, subd. (a).) This section has been "broadly interpreted to authorize a wide variety of remedial orders intended to protect the . . . well-being of dependent children . . . ." (*In re Carmen M.* (2006) 141 Cal.App.4th 478, 486.) Finally, "[t]he juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section . . . ." (§ 362, subd. (d).) Such orders are reviewed for an abuse of discretion. (*In re Carmen M., supra*, 141 Cal.App.4th at p. 486.)

We see no abuse of discretion because the juvenile court found father had a prior history of drug abuse and substantial evidence supports this finding. Father admitted to prior drug use and paternal grandfather reported father had previously attended a drug rehabilitation program. Father admitted that his aunt suspected he was on drugs and no longer wanted him to live in her home. Based on this record, we conclude that the juvenile court's order requiring father to attend drug and alcohol counseling was reasonable under the circumstances and thus not an abuse of discretion.[9]

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[9] We also reject father's related contention that the juvenile court's ruling as to count b-8 prejudiced him because it caused the court to order psychiatric evaluation and mental health counseling. As discussed above, the juvenile court is not limited to jurisdictional findings involving the conduct of a parent in ordering dispositional orders related to that parent. (*In re Briana V.*, *supra*, 236 Cal.App.4th at p. 311.)

IV. DISPOSITION

The jurisdictional findings and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIM, J.

We concur:

BAKER, acting P. J.

MOOR, J.